

Chapter V

COMPLIANCE AND ENFORCEMENT

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Section I

INTRODUCTION

Purpose of the File Review

The purpose of the air enforcement review was to assure that air violations are being identified by MDNR, that significant violations are being reported to EPA, and that timely and appropriate guidelines for enforcement are followed. The review also included an overall assessment of the air enforcement program based on the recent EPA Region VII decision to resume reviews of all state media programs.

Staff

The EPA enforcement review team included Lisa Hanlon, Tony Petruska, and Mike Bronoski, all representatives of the Air Permits and Compliance Branch. Steve Feeler, Air Enforcement Section Chief, was the primary representative for MDNR's air enforcement program. The Data Management review team included Earlyne Hill from EPA and Nikki Grimshaw from MDNR's administrative section.

Section II

METHODOLOGY OF REVIEW

Meeting Preparation

Prior to meeting with the State, several elements were developed to assist in the review. A list of source files to be reviewed was sent to MDNR approximately two weeks prior to the review to allow the State time to gather the file information at one central location. A total of 36 files were reviewed during the audit. The sites were randomly selected from the areas of jurisdiction of each of the six Regional Offices (ROs) within the State. Six source files were reviewed per RO. The sources selected were mainly facilities that were classified as major

sources which were subject to significant Clean Air Act requirements such as NSPS, NESHAP, MACT, or PSD.

The AFS database was used to pull retrievals to assist in the selection of sources for file review. Summary reports from the PC-CEMS database generated by EPA were utilized in the file review.

Entrance Meeting

Following the kick-off meeting with all EPA and MDNR personnel, the EPA enforcement team met with Steve Feeler which allowed the team participating in the review of the enforcement program to become familiar with the air enforcement program overall. To direct the discussion, a list of questions (Appendix 1) was supplied to MDNR prior to the meeting. This allowed the review team to ask questions and to provide an opportunity for both agencies to exchange information.

File Review

To assist with the file review, a checklist was developed by the EPA. This checklist was filled out for each file reviewed. A copy of the checklist is included in Appendix 2. The focus of the review primarily covered the time period starting with calendar year 1998 through the date of the review. Pertinent documents which were developed outside of this time frame, but still had a current regulatory impact on the source, were included in the review as well. If relevant information was found during the review, copies of this material were made and attached to the checklist.

Exit Meeting

It was communicated to MDNR that the two significant issues found in regard to review of the air enforcement program were the deficiency of the Inspection Forms and the failure to document in the files follow-up actions taken. The lack of a penalty policy was also related to be a moderately significant issue for the state.

Section III

OVERVIEW OF ENFORCEMENT PROGRAM

Organizational Structure

The Missouri Air Enforcement Program consists of the central office Enforcement Section and six Regional Offices (ROs) distributed throughout the state. All legal support is provided by the Attorney General's Office (AGO). The RO staff is comprised of multi-media inspectors, while the Enforcement Section consists of enforcement officers and stack testers. There are currently two vacancies in the Enforcement Section at APCP, and the allocated number of positions appears to be adequate. Staffing levels of the Regional Offices are unknown. The staff person responsible for the AFS compliance data system is located in the Administrative Section, rather than the Air Compliance Section.

Inspections

All inspections are performed by the ROs. Approximately 1600 inspections are performed throughout the state annually. All major sources in non-attainment areas are inspected annually, while all other major Title V sources are inspected at least bi-annually. All inspection reports are forwarded to Steve Feeler, who forwards the enforcement cases to Abbie Stockett, who logs and distributes the cases within the Enforcement Section. The enforcement officer will proceed with case development with input solicited from the inspectors who discovered the violations.

Complaints

All complaints are taken by the Regional Offices. Any complaints received by the Enforcement Section are forwarded to the Regional Offices. The Regional Offices attempt to follow-up with all complaints within a few days. Often, an inspector will send a follow-up letter to the complainant with any findings after a complaint is investigated.

Enforcement Procedures

Once an inspector identifies a violation, he or she may issue a Notice of Violation (NOV) or a Notice of Excess Emissions (NOEE) at the time of the inspection. The inspector may also issue NOV's or NOEE's after returning from the field. Approximately 1000 NOV's were issued in 1999, with only 90 of those High Priority Violators (HPV's). All inspection reports are directed to Steve Feeler, who determines if an enforcement action is necessary. Steve directs all enforcement cases to Abbie Stockett, who assigns cases to staff on an availability and expertise basis. Without a formal penalty policy, all penalties are determined by Steve based on the gravity of the violation and experience. When the APCP attempted to set an internal penalty policy, the AGO struck it down, claiming that a penalty policy would have to go through rule making. Once an NOV or NOEE is issued, APCP will frequently send a "Request for Settlement" offer letter to the source. This allows APCP to bring the facility back into compliance in an expeditious manner. Once a preliminary settlement has been reached, a settlement agreement (as with all routine enforcement actions) must be drafted by the Attorney General's Office. If a settlement cannot be reached, an enforcement case is placed on the Missouri Air Conservation Commission agenda to authorize referral to the AGO, which can significantly delay the resolution of the case.

Section IV

SUMMARY OF FINDINGS

Identification of Facility Violations

One noteworthy aspect of Missouri's enforcement program is that all inspection reports and potential violation issues are directed through Steve Feeler, the Enforcement Chief. This provides good consistency for all enforcement actions and ensures that the program runs smoothly. Also, when a RO issues an NOV or NOEE, a letter usually accompanies the notice with an explanation of the violation. This helps facilities address the violations in an expeditious manner. When a violation is found by the RO and forwarded to Steve, Steve then solicits input from the inspector discovering the violation to determine the extent of the violation. This information can be invaluable in choosing the most appropriate course of action for a source. The

Enforcement Section also utilizes a wide assortment of tools to help identify and target inspection candidates.

One significant deficiency our review found is the inadequacy of the inspection reports. These reports indicate little, if any, detail surrounding the compliance of a source. There is no indication of what requirements a facility must adhere to on the inspection forms, so any potential violations found must be hand-written by the inspector in the "Comments" section of the form. It is impossible to tell if an inspector has verified all of the permitting and compliance requirements that a facility is obligated to on the inspection form. This lack of information can greatly reduce the quality and effectiveness of Missouri's enforcement program.

MDNR Response

The regional offices are not under our direct control. However, we are willing to modify our inspection report format. We would appreciate a sample inspection report, if EPA has one available.

Of the 39 files reviewed (Appendix 3) by the enforcement team, 5 violations were identified as being potential High Priority Violators (HPVs). However, since the source classifications on the inspection reports are not consistent, it is difficult to determine whether these sources are major sources and thus HPVs. These facilities are:

Briggs & Stratton (Poplar Bluff) - A July, 1997 stack test exceeded the MACT Subpart N limit. A 2/6/98 settlement agreement required compliance prior to 4/98 retest. No retest is in the file. No penalty was assessed and facility was not added to HPV list.

University of Missouri (Rolla) - A 6/6/00 inspection identified that this facility was not complying with the monitoring requirements in their Title V Operating Permit, which had been issued 5/9/00. The monitoring violations include: failure to do visible observations beyond property boundary, failure to perform Methods 9 and 22 on emission points, and failure to keep records.

Lee Jeans (Lebanon) - An NOV was issued for failure to comply with "Special Condition 1" of permit #0394-002, which requires the company to notify APCP of any change in type or quantity of waste burned. A preliminary settlement was reached for a penalty of \$4,000 and shut down of the incinerators. APCP requested AGO to prepare the settlement agreement on 11/24/98, but no further documentation is found in the file.

Lee Rowan (Jackson) - Violations of Part 63 Subpart N (Chromium Electroplating) for failure to obtain an operating permit and failure to make initial notification and meet initial compliance dates. A Letter of Warning was sent, but no follow-up documentation is found in the file.

Rival (Sedalia) - Violations of Part 63 Subpart T (Vapor Degreasers) for failure to submit initial notification and compliance reports. A Part 70 permit was issued by the Permits Section in March, 2000, but no semi-annual MACT reports are in the compliance file. No further follow-up documentation is found in the file.

MDNR Response

Agree. We are proposing to change our classification system to be based upon Operating Permit classification.

Timely and Appropriate Enforcement Response

One very positive attribute of Missouri's enforcement program is that Missouri does not hesitate to take an enforcement action against a facility when it is warranted. All serious violations that our review team found were acted upon by the Enforcement Section. Complaints are addressed in a very timely fashion, and often the Regional Offices will respond back to a complainant with their findings in a letter very quickly.

One hindrance to the program is that when a follow-up action is taken, often this action is not documented in the file. It is difficult for one to determine whether this violation was properly addressed or what steps were taken by the source or the State to conclude the issue. Also, any violations that are permit-related often are not found in the enforcement files. It

is unclear to the review team if these violations are in the permit files or some other files within the program. This makes it difficult to determine whether the violations have been properly addressed and mitigated by the facility.

MDNR Response

We believe our documentation is adequate, but we will endeavor to instruct our staff in proper documentation techniques. The problem may not be failure to document, but rather an inadequate filing system. There is not file security, so files may be easily misplaced. This situation will improve greatly when all files are moved to the file room.

Data and File Management

MDNR utilizes several in-house data management systems, as well as the national AIRS Facility Subsystem (AFS). MDNR receives compliance information from their regional and local agencies' offices; and is responsible for the data entry into AFS. Enforcement data is tracked in the state in-house data tracking systems very well. This data could easily be transferred into AFS via a batch process.

MDNR currently updates compliance information into AFS directly, however these normal updates consists of state inspections and state NOV information only. This results in MDNR's failure to meet the compliance national minimum data requirement guidelines (see Appendix 4). EPA has been entering data on behalf of MDNR for HPVs. This may include settlement agreements, NOVs, state inspections, and occasionally adding new sources to AFS. EPA must rely on the hard copy information provided by the enforcement section for this data. EPA will terminate this practice in the future, which will reflect poorly on MDNR's lack of enforcement data in national reporting. MDNR has indicated an intention to increase the amount of enforcement data into AFS, but these steps have not been taken as of the date of the Program Review.

MDNR Response

We will enter HPV data and non-HPV data beginning October 1. The Enforcement and Administrative sections of APCP will work together to ensure the completeness of this data.

Also, our review discovered that actions that are not associated or attached to inspection reports are not being entered into AFS. The compliance status is not changed in AFS when a facility leaves or returns to compliance.

MDNR Response

Enforcement will need to coordinate with the Administrative Section to address these issues. We will develop a procedure to route the information to the Administrative Section for entry into AFS.

Overall Assessment of Air Enforcement Program

Overall, the Missouri air enforcement program is working quite well. MDNR has a strong air enforcement program that works well with the existing procedures in place. MDNR does not hesitate to take enforcement actions when warranted, and the central and the regional offices work well together.

Section V

RECOMMENDATIONS

- Improve and enhance the inspection report forms. These forms do not contain the necessary information to determine whether all applicable requirements are being evaluated by the inspector. We recommend that the forms be modified to include greater detail of specific permitting and compliance requirements for each source.

MDNR Response

Acceptable as per previous comment on page 94.

- Improve follow-up documentation in the files. Once an enforcement action has been taken against a facility, the file should contain the evidence of the mitigation action so that any compliance officer can be assured that the violation has been addressed and closed-out.

MDNR Response

Acceptable as per previous comment on page 95.

- Input complete data to AFS. All data necessary to meet the compliance national minimum data requirement guidelines, including HPV information, and follow-up compliance information, needs to be submitted directly by MDNR to AFS.

MDNR Response

The Enforcement Section does not input data into AFS. The Enforcement Section will work with the Administrative Section on this issue.

APPENDIX

Entrance Interview Questions

File Review Checklist

Program Review File List

AFS Compliance Minimum Data Requirements

Entrance Interview Questions

Goals of Audit

1. Assure that violations at major sources are being identified by the State.
2. Assure that significant violators are being reported to EPA.
3. Assure that Timely and Appropriate enforcement actions are being implemented by MDNR.

Entrance Interview Questions

Describe MDNR structure related to clean air act personnel including the location of inspectors, compliance officers, permit writers, attorneys, stack test observers, air planning personnel, ambient monitoring personnel.

Identify, for the previous twelve months, the number of inspections conducted, the number of stack tests observed, the number of construction permits issued, the number of NOVs issued, the number of enforcement actions taken, the penalties assessed and penalties collected.

Describe the APCP filing system. Describe the files available to inspectors.

Describe how sources are selected and scheduled for inspections.

Identify who receives a copy of inspection reports.

Describe how inspections reports are transmitted to compliance officers.

Describe how citizen complaints are handled.

Describe how the enforcement program receives information concerning potential violations from the permit, ambient monitoring, Title V, and planning programs.

Describe other mechanisms through which violations may be found (e.g. self reporting, CEM reports, stack test reports, Title V certifications, MACT exceedance reports, etc.). Describe how these mechanisms are received and reviewed by APCP.

Describe how potential violations are identified and by whom.

Describe the legal process for addressing violations and the timeline associated with this process.

Identify the various enforcement mechanisms available to APCP (e.g. NOVs, Orders, Settlement Agreements, Consent Decrees, etc)

Identify who drafts and who signs the various enforcement actions.

Describe how penalties are set.

Describe the relationship between APCP, AG, and MACC.

Identify the various data systems utilized by APCP and the data entered into each.

Describe what violations are reported to EPA. Describe the documentation submitted to EPA in reporting these violations.

Describe the oversight of local agencies.

Missouri File Review Checklist

Reviewer:_____

Date:_____

Facility File Reviewed:

Name:_____

Address:_____

AIRS ID:_____

Violation Found: Yes_____ No_____

Inspection Reports

13. Are the applicable regulations listed in the inspection report (which includes any permit limitations)?
14. Were excess opacity readings documented? If yes, describe, including any follow-up action taken.
15. Did the report document any other violations found during the inspection? (e.g. constructing without a permit, failure to meet permit conditions). Include any follow-up action taken.

Self Reporting/Excess Emission Reports

16. For Excess Emission Reports (EERs), did the total CEM/COM excess emission exceed 5% of the relevant time covered by the reporting period? Describe. What follow-up action was taken?
17. Did the file contain other self reporting submittals documenting exceedance for a restriction for which the submittal is required, e.g. MACT semi-annual reports? Describe. What follow-up action was taken?

Performance Tests, Citizen Complaints, Others

18. Did the file contain a performance test documenting the source's failure to comply with a regulatory limitation? Describe. What follow-up action was taken?
19. Did the file contain evidence of a violation as a result of responding to a citizen complaint? Describe. What follow-up action was taken?
20. Was there any other evidence or documentation of a violation in the file? Describe. What follow-up action was taken?

Missouri Program Review File List

<u>AIRS ID</u>	<u>Source Name</u>
031-00031	Lee-Rowan Co.
023-00038	Briggs & Stratton
143-00053	E.B.Gee Grain Terminal
215-00003	Thomason Charcoal Company
186-00001	Mississippi Lime
187-00048	Huffy Bicycle
051-00003	Maytag Corp.
159-00005	Rival Manufacturing Co.
131-00006	Lake Ozark Construction
161-00006	University of Missouri - Rolla Power Plant
019-00011	Harry S. Truman Memorial
027-00019	ABB Power T & D
145-00044	Sabreliner Corp.
209-00007	Table Rock Asphalt
213-00007	Royal Oak Charcoal
217-00034	Missouri Public Service

097-00020 Eagle-Picher Industries
105-00045 Lee Company

047-00031 Northland Ready Mix
013-00016 MFA Exchange - Butler
021-00004 St. Joseph Light & Power - Lake Road Plant
147-00005 Northwest Missouri State University
061-00014 Farmer's Stone - Trager
101-00032 Essex Waste Management

121-00004 Macon Municipal Utilities
117-00022 Reeds Seed
001-00003 Truman State University
111-00006 Bunge Corporation
007-00013 MFA Fertilizer Plant
195-00009 Tyson Foods Inc.

183-00130 Blastco Inc.
183-00076 General Motors-Wentzville
113-00042 Farmers Elevator & Supply
219-00001 Charleswood Furniture Corp.
071-00145 Fred Weber Inc.
099-00014 Dow Chemical